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In the Supreme Court of the United States

OCTOBER TERM 1966

NO. 787

KENNETH H. GRANT, MALCOLM C. BEARDMORE, GUY H. HEATER, SAM BUXTON, G. E. McCURDY LLOYD CHANDLER, HELEN L. BEARDMORE, WILLIAM McCARVER, ROSE M. McCARVER, GWEN GHRIST, GUY GHRIST, LEOTIS C. SAUNDERS, DONNA E. SAUNDERS, MAUDE E. EVANS, ORIN H. SASS, W. DALE ELLIS, VERDA BUXTON, ELIZABETH McCURDY, WALTER S. SAUNDERS, Sr., DONALD SADLOWSKY, CLAUS P. SASS, ALICE SASS ALVERDA SASS, JEAN R. BENNETT, MARVIN W. BLANK, JOHN M. WEIR, ROBERT V. PRESLEY, JOHN H. SASS, R. R. GRAVEN, GRANT T. SHOLD, SAM GHRIST, MARJORIE REAVIS, JOANNA SASS, MARY ELLEN GRANT, HARRY MEEK, VINA ELLIS, FRANK G. BOWMAN, HELEN BOWMAN, DONALD P. SULLIVAN, LUCILLE WRIGHT, EDWARD W. ALLEN, ALMA G. ALLEN, EARL BLANK, RUSSELL Y. LAM, PHYLLIS LAM, L. ROY STACEY, WILLIAM KNOBLAUCK, NORA LEE LAMB, ALLEN L. DENNIS, VERNON WILLIAMS, WALTER STACE, HENRY F. BUNYARD, ORIN CLEMANS, MARY CLEMANS, VERLE WILKINS, CLAUDE WILKINS, P. C. ROGERS, ANNE M. ROGERS, MARIE BLANK, OLIVE L. JONES, LEONARD W. JONES, O. D. PIERCE, LENA PIERCE, JOHN WRIGHT, FLOSSIE M. CARNAHAN, MARGARET CARNAHAN, CRESSA STONE CARL A. CARNAHAN and OPAL GHRIST,

Petitioners

v.

SCHOOL DISTRICT NO. 61, BAKER COUNTY, Oregon,

Respondent

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

DAVID C. SILVEN
Banta, Silven & Young
1950 Third Street
Baker, Oregon 97814
Attorneys for Respondent

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JURISDICTION

I.

No federal question was raised either in the trial court or state appellate court.

II.

No federal question was in fact determined.

III.

The validity of any state statute was not drawn in question on the ground of its being repugnant to the Constitution of the United States, nor is there any right, title, privilege or immunity specially set up or claimed under such Constitution.

STATEMENT OF THE CASE

The case was soley for a declaratory judgment that the defendant did not have the right to change, move or consolidate a school without first obtaining the approval of the patrons in the attendance area which said school serves.

The document presented at the public hearing on the proposed reorganization of school district was not a promise but merely a recommendation for consideration of the new board to be formed, that no school be changed, without the approval of the patrons. (Amended Complaint Paragraph IV).

It was a disputed and contested question of fact, whether the electors were misled.

Neither the constitutionality of the state statutes nor any other federal question, was ever raised in any of the proceedings.

ARGUMENT

Oregon Constitution, Art. VIII, §3, provides:

> "The Legislative Assembly shall provide by law for the establishment of a uniform and general system of common schools".

Education is a governmental obligation of the state and the power ascribed to the Legislature under this constitutional provision empowers the Legislature to establish school districts.

> Monaghan vs. School District No. 1, 211 Or. 360, 373, 315 P2d 797, 804

The Legislature, pursuant to that authority, authorized reorganization and consolidation of school districts. ORS Ch. 330. School Districts may be abolished or dissolved at the will of the Legislature. Attorney General, ex rel, Kiest, vs. Lowrey, 199 U. S. 233, 26 Sup. Ct. 27; 47 Am. Jur. 310 Schools §§ 17, 18.

One of the discretionary powers of the school board

in Oregon is the location of schools. ORS. 332.155 states:

> "A district school board may: (1) Furnish *** and build schoolhouses *** and locate, buy and lease lands for all school purposes ***, (3) lease, sell and convey such district land and other property as may not in their judgment be required for school purposes."

This discretionary power as to location of schools will not be interfered with by the court. Padberg, et al, vs. Martin, et al, 225 Or 135, 141, 357 P2d 255, 258.

Therefore not only was no federal question raised, discussed nor determined, it is obvious that this is purely a state and local matter, and the petition for the writ should be denied.

The opinion of the Oregon Supreme Court (Petition, App. B, Page 12) that "misrepresentations made during a campaign by public officials will not vitiate an election" must be read with the court citations in mind. The only reported misrepresentation in West Missouri Power Co., vs. City of Washington, 80 Fed. 2d 420 (10th Circuit 1935) was the use of the word "appurtenances" in a bond issue for power purposes and failure to inform the public that this included "generators". Misrepresentation could hardly be charged on the basis of questionable choice of words.

Anselmi v. City of Rock Springs, 53 Wyo. 223, 239, 80 P2d 419, 425, in stating that misrepresentations will not vitiate the election, nevertheless recognized as seen by page 423 that if the electors were actually misled the court would have declared the bonds invalid. Thus the Oregon Court was not adopting an absolute rule of law that misrepresentations during the campaign were ineffective. It was aware that if the voters were actually misled, the election could be set aside. Being thus aware and still upholding the election in the instant case, amounts to a judicial determination and finding that the voters in fact were not misled, which fact is confirmed by the transcript of record.

CONCLUSION

The respondent opposes review of any matter contained in the petition as no federal question nor constitutional issue was raised, involved or determined in the trial court nor state appelate court.

Respectfully submitted,

DAVID C. SILVEN
BANTA, SILVEN & YOUNG
1950 Third Street
Baker, Oregon
Attorneys for Respondent